

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

JAMES A. BOYD,

Plaintiff,

v.

DR. MARC STERN, et al.,

Defendants.

No. C06-360P

ORDER ON PLAINTIFF'S MOTION  
FOR ORDER OF EXPERT SERVICES  
AT PUBLIC EXPENSE AND  
"ADDENDUM REQUEST" FOR  
INJUNCTIVE RELIEF

This matter comes before the Court on a Report and Recommendation (R&R) by the Honorable James P. Donohue, United States Magistrate Judge. (Dkt. No. 37). Judge Donohue recommends denying "Plaintiff's Motion and Affidavit for Order of Expert Services at Public Expense" (Dkt. No. 17), as well as Plaintiff's "Addendum Request for Injunctive Relief in Support of Plaintiff's Motion for Order of Expert Services at Public Expense." (Dkt. No. 24). The Court, having reviewed the R&R, Plaintiff's objections to the R&R, and the balance of the record, finds and ORDERS as follows:

(1) The Court ADOPTS the R&R. The Court finds no error in Judge Donohue's determination that Plaintiff is not entitled to have a liver biopsy conducted upon himself at public expense pursuant to Fed. R. Civ. P. 35(a).<sup>1</sup> The Court also agrees that Plaintiff's request for

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<sup>1</sup> Because Plaintiff's request under Rule 35(a) is a non-dispositive matter, Judge Donohue's determination on this issue shall not be set aside unless it is clearly erroneous or contrary to law. See Fed. R. Civ. P. 72(a).

injunctive relief, in which Plaintiff requests that he be transported to a hospital to receive a liver biopsy at public expense, should be denied. As Judge Donohue noted, “Plaintiff makes no assertion in his request for injunctive relief that he will suffer irreparable harm absent the requested judicial intervention” and it is apparent that this request is “but another attempt by plaintiff to obtain expert services to support his claims that defendants have violated his Eighth Amendment rights.” (R&R at 3). Although Plaintiff asserts in his objections to the R&R that he “feels as though he is slowly dying” and will suffer irreparable harm unless a liver biopsy is ordered, such conclusory assertions do not provide persuasive evidence that irreparable harm is likely, particularly in light of Plaintiff’s failure to assert earlier that he would suffer irreparable harm absent a preliminary injunction.

It should also be noted that Plaintiff is requesting a “mandatory injunction” that seeks to compel Defendants to perform an affirmative act, rather than a “prohibitory injunction” that seeks to preserve the status quo pending trial. The Ninth Circuit has explained the distinction as follows:

A prohibitory injunction preserves the status quo. A mandatory injunction “‘goes well beyond simply maintaining the status quo . . . [and] is particularly disfavored.’” When a mandatory preliminary injunction is required, the district court should deny such relief “‘unless the facts and law clearly favor the moving party.’”

Stanley v. Univ. of S. Cal., 13 F.3d 1313, 1320 (9th Cir. 1994) (internal citations omitted). Here, Plaintiff has not demonstrated that the facts and the law are clearly in his favor.

(2) Therefore, “Plaintiff’s Motion and Affidavit for Order of Expert Services at Public Expense” (Dkt. No. 17) and “Plaintiff’s Addendum Request for Injunctive Relief in Support of Plaintiff’s Motion for Order of Expert Services at Public Expense.” (Dkt. No. 24) will be DENIED.

(3) The clerk is directed to send copies of this order to Plaintiff, to all counsel of record, and to the Honorable James P. Donohue.

Dated: December 15, 2006

s/Marsha J. Pechman  
Marsha J. Pechman  
United States District Judge